

REMARKS

Claim 2 has been amended to correct a typographical error. Claims 1, 2, 7, 11, 13, 16, and 22-24 have been amended to refer to BMP-2 to provide clearer written description support in priority application number 10/257,126, now U.S. Patent 7,465,566. Claims 27-31 have been added to further claim BMP-4, BMP-5, BMP-6, and BMP-7 that were not mentioned explicitly in the priority application. No other claim has been amended, added, or deleted. No new matter has been added. Upon entry of the above amendments, claims 1-13 and 15-31 will be in the application.

Obviousness-type Double Patenting

Claims 7-13 and 16-26 stand rejected on the ground of obviousness-type double patenting as allegedly being unpatentable as obvious over claims 4-10, 13 and 18 of U.S. Patent No. 7,465,566. A suitable Terminal Disclaimer is attached hereto that is believed to be sufficient to obviate this rejection. Withdrawal of the rejection of claims 7-13 and 16-26 as allegedly being unpatentable as obvious over claims 4-10, 13, and 18 of U.S. Patent No. 7,465,566 is solicited.

Claims 1-13 and 16-26 stand rejected on the ground of obviousness-type double patenting as allegedly being unpatentable as obvious over claims 1, 2, 4-11, 13 and 16-24 of U.S. Patent No. 7,374,916. A suitable Terminal Disclaimer is attached hereto that is believed to be sufficient to obviate this rejection. Withdrawal of the rejection of claims 1-13 and 16-26 as allegedly being unpatentable as obvious over claims 1, 2, 4-11, 13, and 16-24 of U.S. Patent No. 7,374,916 is solicited.

Rejection under 35 U.S.C. §102(b)

Claims 1-9, 13, 22, 24, and 25 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Brighton (WO 01/62336). This rejection is traversed.

In the rejection, the examiner notes that the rejected claims recite bone morphogenetic proteins (BMPs) in the plural but that the priority application number 10/257,126 (now USP 7,465,566) only discloses BMP-2 and thus allegedly does not support the claims, which recite plural BMPs. The examiner thus did not accord priority to 10/257,126. Upon denying priority to 10/257,126, the examiner then rejected the claims over the published PCT counterpart to 10/257,126 (WO 01/62336), which published on August 30, 2001.

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Applicant has amended the claims to recite BMP-2, which is clearly supported by 10/257,126, as acknowledged by the examiner. A grant of priority of the present application to the February 23, 2000 priority date of 10/257,126 is solicited. Upon grant of priority to 10/257,126, WO 01/62336 would not be prior art to claims 1-13 and 15-26, and accordingly, withdrawal of the rejection of claims 1-9, 13, 22, 24, and 25 under 35 U.S.C. §102(b) is appropriate and solicited.

Applicant notes that claims 10-12, 16-21, 23, and 26 have not been rejected over prior art and are thus presumed to be in condition for allowance upon entry of the enclosed Terminal Disclaimers.

Finally, claims 27-31 have been added to claim the species of BMPs (BMP-4, BMP-5, BMP-6, and BMP-7) for which data is presented in the present application. Applicant submits that there is no suggestion of extending the teachings of WO 01/62336 to BMP-4, BMP-5, BMP-6, or BMP-7 and no teaching of the resultant signal. Also, due to the specific and selective nature of the applied signal, Applicant submits that the signal for up-regulating BMP-4, BMP-5, BMP-6, and/or BMP-7 would not necessarily be known or obvious from the signal for up-regulating BMP-2, even though the optimal signals ended up being essentially the same. There is simply no data in the prior art on this point. Moreover, Applicant notes that BMP-3 and BMP-8 have not been found to respond to the same signal. Accordingly, claims 27-31 are novel and nonobvious over the teachings of WO 01/62336. Allowance of claims 27-31 is further solicited.

Conclusion

For the reasons recited herein, all claims are believed to be in condition for allowance. A Notice of Allowability is solicited.

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